

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
Connect America Fund ) WC Docket No. 10-90

**REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING**

**Adopted: December 19, 2016**

**Released: December 20, 2016**

**Comment Date: (30 days after date of publication in the Federal Register)**

**Reply Comment Date: (45 days after date of publication in the Federal Register)**

By the Commission: Commissioner O’Rielly issuing a statement.

**I. INTRODUCTION**

1. With this Report and Order, we adopt measures to address the significant demand for Alternative Connect America Cost Model (A-CAM) support and direct the Wireline Competition Bureau (Bureau) to take steps consistent with this Order to enable electing carriers to receive A-CAM support. This implementation of the voluntary path to the model will extend broadband service to more than 800,000 people in rural, high-cost areas that lack such service today.

2. We allocate an additional \$50 million annually to the budget for model-based support and seek comment in the Further Notice of Proposed Rulemaking below on whether to expand the A-CAM budget to provide additional funding with an associated increase in broadband deployment obligations. For those carriers for whom the offer of model-based support was less than the legacy support they received in 2015, we do not revise the support amounts and associated obligations, and accordingly we direct the Bureau immediately to authorize these carriers to receive A-CAM support pursuant to their existing elections. We also adopt a methodology to make revised offers to the remaining electing carriers that prioritizes support to those areas of the country that have the lowest deployment of broadband. Carriers receiving a second offer will have up to 30 days from the release of this Order to notify the Bureau whether they elect that revised offer. We condition the second offer of A-CAM support upon a requirement that carriers electing that second offer agree to meet the terms of the original offer if additional high-cost support becomes available in 2017 to fund the original offers.

**II. BACKGROUND**

3. In the *Rate-of-Return Reform Order*, we adopted a voluntary path for rate-of-return carriers to elect to receive model-based support for a 10-year term, in exchange for extending broadband service to a pre-determined number of eligible locations.<sup>1</sup> To facilitate the voluntary path to the model, we allocated up to an additional \$150 million annually from existing high-cost funds. The overall budget for this path would consist of that \$150 million plus the legacy support received by electing carriers in 2015.<sup>2</sup> Carriers had until November 1, 2016 to indicate, on a state-by-state basis, whether they elect to

<sup>1</sup> *Connect America Fund et al., WC Docket No. 10-90 et al., Report and Order et al.*, 31 FCC Rcd 3087, 3094-3117, paras. 17-79 (2016) (*Rate-of-Return Reform Order*). We directed the Bureau to “take all necessary steps to release the adopted version of the model for purposes of calculating support amounts for rate-of-return carriers electing to receive model support.” *Id.* at 3102, para. 37.

<sup>2</sup> *Rate-of-Return Reform Order*, 31 FCC Rcd at 3111, para. 60.

receive model-based support.<sup>3</sup> We directed the Bureau to total the amount of model-based support for electing carriers and determine the extent to which, in the aggregate, their model-based support plus transition payments exceed the total legacy support received for 2015 by that subset of rate-of-return carriers.<sup>4</sup> We indicated that if demand for the model exceeded the available budget (including the additional \$150 million annually), we may consider whether circumstances warrant an additional allocation of up to \$50 million annually.<sup>5</sup> We acknowledged, however, that “other measures may be necessary” if demand for the voluntary path to the model is so great that the funding per location cap would need to be set below \$146.10 per location to remain within the available budget, but recognized that it was premature to decide how to address a situation that might not materialize.<sup>6</sup> We indicated that reducing the funding cap per location would reduce the number of fully funded locations that would be subject to defined broadband deployment obligations.<sup>7</sup>

4. On November 2, 2016, the Bureau announced that 216 rate-of-return companies had submitted letters electing 274 separate offers of A-CAM support in 43 states, and that model-based support and transition payments would exceed the overall 10-year budget set by the Commission by more than \$160 million annually.<sup>8</sup> The elections consist of 437 separate study areas. The Bureau encouraged parties to submit *ex partes* into the record “on what measures or combination of measures should be considered to address the high level of interest in A-CAM model-based support.”<sup>9</sup>

### III. DISCUSSION

5. In light of the considerable interest by rate-of-return companies in electing to receive model-based support in exchange for deploying broadband-capable networks to a predetermined number of eligible locations, we adopt a combination of measures designed to enable as many electing carriers as possible to receive model-based support, and thereby maximize broadband deployment in rural areas,

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<sup>3</sup> See *Wireline Competition Bureau Announces Support Amounts Offered to Rate-of-Return Carriers to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 31 FCC Rcd 8641 (WCB 2016) (*A-CAM Offer Public Notice*); see also *Wireline Competition Bureau Releases Report for Alternative Connect America Cost Model with Minor Corrections*, WC Docket No. 10-90, Public Notice, 31 FCC Rcd 8959 (WCB 2016); *Wireline Competition Bureau Announces Corrected Offers of Alternative Connect America Cost Model Support to Companies Affected by Technical Correction*, WC Docket No. 10-90, 31 FCC Rcd 11939 (WCB 2016).

<sup>4</sup> *Rate-of-Return Reform Order*, 31 FCC Rcd at 3112-13, para. 62. The Commission adopted a three-tiered transition for electing carriers for whom model-based support is less than legacy support. *Id.* at 3115-16, paras. 72-75.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 3113, para. 62 n.136. When the Bureau issued the *A-CAM Offer Public Notice*, it noted that measures to prioritize among electing carriers could, for instance, include selecting among electing carriers based on their level of deployment (either their percentage of locations lacking 10/1 Mbps or the absolute number of such locations) or the average cost per location so as to ensure that the available funding extends broadband to as many consumers as possible. *A-CAM Offer Public Notice*, 31 FCC Rcd at 8642-43.

<sup>7</sup> *Rate-of-Return Reform Order*, 31 FCC Rcd at 3113, para. 63.

<sup>8</sup> *Wireline Competition Bureau Announces Results of Rate-of-Return Carriers that Accepted offer of Model Support*, WC Docket No. 10-90, DA 16-1246 (WCB rel. Nov. 2, 2016) (*A-CAM Election Results Public Notice*). This figure included Adak. As discussed more fully below, we do not extend a second offer to Adak. This figure did not include two carriers that failed to submit timely letters to the Commission indicating their desire to accept the offer. Two carriers subsequently filed requests for waiver of the deadline. See *Petition for Waiver of IAMO Telephone Company, Inc.*, WC Docket No. 10-90 (filed Nov. 4, 2016); *Petition for Waiver of Montrose Mutual Telephone Company*, WC Docket No. 10-90 (filed Nov. 14, 2016). We do not address those requests at this time.

<sup>9</sup> *A-CAM Election Results Public Notice*, DA 16-1426, at 2.

particularly those areas with lower percentages of deployment.<sup>10</sup> This will advance our overarching policy objective of extending service to those consumers that lack service.<sup>11</sup>

6. First, we find that circumstances warrant allocating an additional \$50 million annually to the A-CAM budget from existing cash in the high-cost account. There is strong demand among rate-of-return carriers for model-based support. Adding an additional \$50 million will mean that collectively, electing carriers would have 569,170 fully funded locations instead of 519,791 locations. Moreover, adding an additional \$50 million will mean that 405,379 locations that lack 10/1 Mbps service today will receive 10/1 Mbps or better service as a result of our implementation of the voluntary path to the model. Absent this additional allocation, A-CAM recipients would only be obligated to newly extend 10/1 Mbps or better service to 367,812 locations. The additional allocation of \$50 million annually from existing cash in the high-cost account will advance the Commission's longstanding objective to provide high-cost support based on forward-looking efficient costs and to help spur additional broadband deployment in rural areas. Accordingly, we conclude that \$200 million annually, or \$2 billion over the 10-year term, will be provided from existing high-cost funds to facilitate the voluntary path to the model.<sup>12</sup>

7. Second, we lock in the election of carriers whose offer of model-based support is less than the legacy support that they received in 2015 in order to maximize their contribution to the A-CAM budget and broadband deployment. For these "glide path carriers," who accepted 45 offers of support, we maintain the original amount of A-CAM support, the \$200 per location funding cap, and the associated deployment obligations. Because there is no change in the offered support amount or deployment obligations, these carriers' indication of interest in the model is irrevocable.<sup>13</sup> We agree with commenters that one of the benefits of A-CAM support is the certainty provided regarding funding.<sup>14</sup> We also agree with commenters that the contribution to the overall A-CAM budget by these carriers will allow for additional broadband deployment by the other electing companies.<sup>15</sup> We conclude that this approach largely addresses concerns raised by NTCA in its Petition for Reconsideration of the *Rate-of-Return Reform Order* because glide path carriers cannot remain on the rate-of-return path by declining a revised offer.<sup>16</sup> Accordingly, we direct the Bureau immediately to issue a public notice authorizing the Universal

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<sup>10</sup> See, e.g., Letter from Jason B. Williams, Chief Operating Officer, Blackfoot Telephone Cooperative, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Oct. 20, 2016) (any budget controls for the A-CAM support methodology must be designed in such a way to ensure that as many carriers as possible continue to have a choice to elect model-based support) (Blackfoot Oct. 20, 2016 *Ex Parte* Letter).

<sup>11</sup> *Rate-of-Return Reform Order*, 31 FCC Rcd at 3091-92, para. 6.

<sup>12</sup> For the purpose of determining whether the additional A-CAM support and transitional payments exceed the \$200 million budget, the Bureau will consider the annualized amount that would be disbursed over the 10-year term. See also *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 31 FCC Rcd 6856, 6857, para. 6 (WCB 2016) (clarifying how calculations would be performed for initial offer).

<sup>13</sup> *Rate-of-Return Reform Order*, 31 FCC Rcd at 3112-13, para. 62.

<sup>14</sup> See, e.g., Letter from Keith Oliver, Home Telephone Company, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Oct. 14, 2016) (Home Telephone Oct. 14, 2016 *Ex Parte* Letter).

<sup>15</sup> See, e.g., Home Telephone Oct. 14, 2016 *Ex Parte* Letter; Letter from Keith Oliver, Home Telephone Company, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Nov. 29, 2016) (Home Telephone Nov. 29, 2016 *Ex Parte* Letter); Letter from Gerald J. Duffy, WTA Regulatory Counsel, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Nov. 11, 2016) (WTA Nov. 11, 2016 *Ex Parte* Letter); Letter from B. Lynn Follansbee, Vice President Law & Policy, USTelecom – The Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Nov. 14, 2016) (USTelecom Nov. 14, 2016 *Ex Parte* Letter); Letter from Michael R. Romano, Senior President – Industry Affairs & Business Development, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed May 12, 2016).

<sup>16</sup> NTCA-The Rural Broadband Association has filed a petition for reconsideration of the budgetary effect of carriers declining a second, revised offer. See Petition for Reconsideration and/or Clarification of NTCA – The Rural Broadband Association, WC Docket No. 10-90, at 12-14 (filed May 25, 2016). The measures we adopt today to

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Service Administrative Company (USAC) to disburse the appropriate amounts of A-CAM support to these carriers.

8. Third, for the remaining electing carriers, whose original offer of model-based support is more than their legacy support, we adjust the offer of support in a fashion that is designed to apply a reduction in the offer to all such carriers, while preserving as much of the original offer as possible for those that are lowest deployed. In the *Rate-of-Return Reform Order*, we indicated that additional measures may be necessary if demand for the voluntary path to the model is so great that the funding per location cap would need to be set below \$146.10, the maximum amount of support per location that Connect America Phase II provides to price cap carriers.<sup>17</sup> Thus, as a first step, we direct the Bureau to reduce the funding cap to \$146.10 per location. As we anticipated, however, revised A-CAM support amounts using this lower funding cap still would exceed the budget we adopt today, and therefore we direct the Bureau to further reduce support offers by varying percentages based on the percentage of locations lacking 10/1 Mbps. Those carriers with lower current deployment will be offered a higher percentage of the adjusted offer amount, so funding is targeted more towards companies that have deployed 10/1 Mbps broadband service to a lower percentage of locations in eligible high-cost census blocks.<sup>18</sup> The percentage reduction in support for these carriers effectively sets a unique per-location funding cap for each carrier based on the cost characteristics of its service area, i.e., lower cost service areas will have lower funding caps than higher cost service areas. Specifically, carriers that are less than 20 percent deployed at 10/1 Mbps in eligible areas will be offered 95.96118 percent of what the offer would be using a uniform \$146.10 funding cap.<sup>19</sup> Carriers that are 20 percent deployed or more, but less than 40 percent, will be offered 95 percent of the amount of support calculated using a \$146.10 funding per location cap. Carriers that are 40 percent deployed or more, but less than 60 percent, will be offered 90 percent of the amount of support with a \$146.10 per location funding cap. Carriers that are 60 percent deployed or more, but less than 80 percent, will be offered 85 percent of the amount of support with a \$146.10 per location funding cap. Carriers that are 80 percent deployed or more, but less than 90 percent, will be offered 80 percent of the amount of support with a \$146.10 per location funding cap. We have calculated that offers of these amounts would stay within the budget.

9. We conclude that this approach has several benefits over an approach of uniformly reducing the funding per location cap across the board. By using a proportional reduction in this step of the process, higher-cost carriers' average support per location will be higher than if we had continued to reduce the funding cap uniformly for all carriers.<sup>20</sup> In addition, we expect that this approach will result in

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revise the remaining 228 A-CAM offers result in 18 revised offers for whom the carrier would be offered a revised amount that is less than legacy support received in 2015. However, the net decrease in legacy support for this group of carriers is only approximately \$4.2 million, a *de minimis* amount in the context of the overall rate-of-return budget.

<sup>17</sup> *Rate-of-Return Reform Order*, 31 FCC Rcd at 3113, n.136.

<sup>18</sup> In the *Rate-of-Return Reform Order*, the Commission decided to prioritize the availability of model support to those carriers that have deployed 10/1 Mbps broadband to less than 90 percent of the eligible locations in their study area(s) in the state. *Rate-of-Return Reform Order*, 31 FCC Rcd at 3113, para. 66 (“This will preserve the benefits of the model for those companies that have more significant work to do to extend broadband to unserved consumers in high-cost areas.”). This determination was made based on FCC Form 477 data submitted through March 30, 2016. For administrative convenience and consistency, we direct the Bureau to utilize the same data set for purposes of making the adjusted offer.

<sup>19</sup> These carriers have reported deployment of 10/1 Mbps broadband to eligible census blocks that collectively contain less than 20 percent of the locations in all census blocks that are eligible for support.

<sup>20</sup> The per-location funding cap would need to be set at approximately \$120 to stay within the budget using a uniform per-location cap for all carriers. See also Letter from Cheryl L. Parrino, on behalf of the Nebraska Companies, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Oct. 17, 2016) (Nebraska

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broader geographic diversity in A-CAM authorizations.<sup>21</sup> Thus, by allocating an additional \$50 million annually, lowering the per-location funding cap to \$146.10 and then reducing support proportional to carriers' deployment level, all remaining carriers will be offered 80 percent or more of the amount that would be calculated using a uniform \$146.10 funding per location cap.

10. We also find that this approach is preferable to fully funding carriers based on their percentage of deployment until the budget is exhausted, despite the reduction in fully funded locations. Although that approach would fully fund more locations for a subset of carriers, in the aggregate there would be many fewer fully funded locations, because so many carriers would not receive a second offer.

11. The approach we adopt today addresses the concerns of commenters that argue we should not involuntarily disqualify any company from receiving A-CAM support.<sup>22</sup> The approach we adopt targets funding to areas with lower percentages of deployment and does not eliminate carriers that have indicated their interest in moving to a forward-looking, model-based mechanism. All of these electing carriers will get a revised offer and can make their own business decision as to whether to accept that offer.

12. We condition acceptance of the second offer of A-CAM support upon a requirement that carriers electing that second offer agree to meet the terms of the original offer if in 2017 the Commission decides, after consideration of the record received in response to the Further Notice of Proposed Rulemaking below, to fund the original offers. These carriers have already submitted irrevocable indications of interest in those original offers. Consequently, any carrier electing to accept the revised offer is agreeing to the terms of the revised offer, while also agreeing to remain bound by the terms of the original offer if authorized to receive the full amount before December 31, 2017.

13. Consistent with our decision in the *Rate-of-Return Reform Order*,<sup>23</sup> the deployment obligations for these carriers receiving a revised offer will be modified on an individual basis, consistent with each carrier's revised support amount and per-location funding cap, which results in fewer fully funded locations and more capped locations. The Bureau has calculated the number of fully funded locations, i.e., locations in census blocks with average costs above \$52.50 and at or below \$52.50 plus each carrier's revised per-location funding cap, and the revised number of locations where the carrier will be required to offer 25/3 Mbps, 10/1 Mbps, 4/1 Mbps, and to provide broadband service upon reasonable request.

14. The Bureau will shortly release a Public Notice announcing the revised model-based support amounts and revised deployment obligations, and carriers will have 30 days to confirm that they are willing to accept the revised final offer.<sup>24</sup> Any such election shall be irrevocable.

15. Pursuant to the *Rate-of-Return Reform Order*, carriers receiving A-CAM support must exit the National Exchange Carrier Association (NECA) Common Line pool, while they have the option of continuing to use NECA to tariff their Common Line and Consumer Broadband-only Loop (CBOL)

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Companies Oct. 17, 2016 *Ex Parte* Letter), Attach. at 12 (arguing that a proportional reduction is fairer and spreads reductions across all carriers).

<sup>21</sup> See Letter from Cheryl L. Parrino, on behalf of the Nebraska Companies, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Nov. 14, 2016) (Nebraska Companies Nov. 14, 2016 *Ex Parte* Letter), Attach. at 2-4 (attaching maps illustrating Western states generally have higher costs).

<sup>22</sup> See, e.g., Home Telephone Nov. 29, 2016 *Ex Parte* Letter, at 2; Nebraska Companies Nov. 4, 2016 *Ex Parte* Letter, Attach. at 1; Blackfoot Oct. 20, 2016 *Ex Parte* Letter; Letter from Gerald J. Duffy, WTA Regulatory Counsel, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Sept. 23, 2016).

<sup>23</sup> *Rate-of-Return Reform Order*, 31 FCC Rcd at 3113, para. 63.

<sup>24</sup> See *Rate-of-Return Reform Order*, 31 FCC Rcd at 3114, para. 68.

charges.<sup>25</sup> A carrier accepting the revised offer shall notify NECA of its election and coordinate with NECA to implement tariff revisions.<sup>26</sup> Although carriers will have up to 30 days to respond to the revised offer, the Bureau may authorize USAC to disburse the appropriate amounts of A-CAM support as soon as a carrier accepts the revised offer, subject to USAC confirming that the carrier has notified NECA that it is withdrawing from the Common Line pool.

16. We direct the Bureau not to extend a second offer to Adak. In the *Alaska Plan Order*, we noted that those Alaska rate-of-return carriers that are unable to offer even 4/1 Mbps service would not be permitted to elect A-CAM support.<sup>27</sup> Adak is -unable to meet a 4/1 Mbps service obligation, and as such is not eligible to elect A-CAM support.<sup>28</sup>

#### IV. FURTHER NOTICE OF PROPOSED RULEMAKING

17. In this Further Notice of Proposed Rulemaking, we seek comment on whether to allocate additional high-cost funding to the voluntary path to the model. As discussed above, carriers that accept the second offer will do so on the condition that they commit to meet the deployment obligations of the original offer if authorized no later than December 31, 2017 to receive additional A-CAM funding equivalent to the original offer. We therefore seek comment on whether the Commission should further increase the budget for A-CAM to provide the full amount of the original offer for some or all of those carriers that accepted the second offer of model-based support.

18. We seek comment on increasing the budget by a lesser amount. If the increased budget for A-CAM were insufficient to cover all participants, should the Bureau prioritize funding to those with the least broadband deployment using the same data set as that utilized for the adjusted offer? Alternatively, if we increase the budget by a smaller amount, should the Bureau revise the offers to an amount less than the original offer? In that latter situation, we expect that the Bureau would make a new offer, limited to the carriers that originally elected the first offer and accepted the revised offer; those carriers would be free to choose whether to accept that new offer and the associated broadband deployment obligations.

19. We note that commenters responding to the Bureau's *A-CAM Election Results Public Notice* uniformly support increasing the A-CAM budget by more than \$50 million. For instance, USTelecom, ITTA, WTA and NTCA argue that the Commission should fully fund A-CAM.<sup>29</sup> The Commission would need to increase the overall high-cost budget by an additional \$110 million per year if

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<sup>25</sup> *Id.* at 3159-60, paras. 194-96. A carrier receiving A-CAM support may assess a CBOL charge that does not exceed \$42 per line per month. *Id.* at 3159-60, para. 194.

<sup>26</sup> To ease the administrative burden of multiple tariff filings as individual carrier decisions are made, NECA may wait until after the 30-day deadline passes to file any necessary tariff revisions.

<sup>27</sup> See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139, 10142, n.18 (2016).

<sup>28</sup> See Letter from Christine O'Connor, Executive Director, Alaska Telephone Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at Attach. (filed May 9, 2016), and Letter from Christine O'Connor, Executive Director, Alaska Telephone Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at Attach. (filed May 12, 2016) (providing, in part, Adak's proposed commitment for participation in the Alaska Plan and showing access to only satellite middle-mile facilities at speeds less than 4/1 Mbps).

<sup>29</sup> USTelecom Nov. 14, 2016 *Ex Parte* Letter (arguing there is a clear mandate from rural America that more support for infrastructure programs is needed); Letter from Genevieve Morelli, President, ITTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Nov. 11, 2016) (arguing that there is sound justification for the Commission to allocate sufficient additional funding for A-CAM to overcome the entire budgetary shortfall); WTA Nov. 11, 2016 *Ex Parte* Letter (arguing that full A-CAM funding is the optimal outcome); Letter from Michael R. Romano, Senior President – Industry Affairs & Business Development, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Nov. 21, 2016) (NTCA Nov. 21, 2016 *Ex Parte* Letter) (urging Commission to increase budget for both A-CAM recipients and those not on model-based support).

all carriers elect the second offer, and by a lesser amount if fewer do. Increasing the overall high-cost program budget to provide that additional support to A-CAM could result in as many as approximately 75,000 more locations being “fully funded” under A-CAM than would be under the second offer, resulting in additional broadband deployment. If the Commission were to fully fund all of the A-CAM offers elected by carriers, collectively those electing carriers would be required to extend 10/1 Mbps or better service to more than 50,000 additional unserved locations, compared to what will be required if all electing carriers choose to accept the revised second offer. We invite comment from all interested stakeholders on whether to enlarge the budget for A-CAM support, including the costs and benefits of allocating limited funding for this particular purpose.

## V. PROCEDURAL MATTERS

### A. Paperwork Reduction Act

20. This document does not contain new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

### B. Congressional Review Act

21. The Commission will send a copy of this Report and Order and Further Notice of Proposed Rulemaking to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>30</sup>

### C. Regulatory Flexibility Act

22. In the *April 2014 Connect America FNPRM*, the Commission proposed a framework for a voluntary election by rate-of-return carriers to receive model-based support and tentatively concluded that such a framework could achieve important universal service benefits by creating incentives for deployment of voice and broadband-capable infrastructure.<sup>31</sup> The Commission sought written comment on the proposal, including comment on the Initial Regulatory Flexibility Analysis (IRFA).<sup>32</sup> The Commission did not receive any comments on the *April 2014 Connect America FNPRM* IRFA. In the *Rate-of-Return Reform Order*, the Commission adopted a voluntary path under which rate-of-return carriers may elect to receive model-based support for a term of 10 years in exchange for meeting defined build-out obligations.<sup>33</sup> The Commission issued a Final regulatory Flexibility Analysis (FRFA) that conforms to the Regulatory Flexibility Act of 1980 (RFA), as amended.<sup>34</sup> This present Report and Order and Further Notice of Proposed Rulemaking implements the framework previously adopted by the Commission and seeks comment on additional funding to implement that framework. The Commission promulgates no additional final rules, and our present action is, therefore, not an RFA matter.

### D. Ex Parte Presentations

23. The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>35</sup> Persons making *ex parte* presentations must file a

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<sup>30</sup> *See* 5 U.S.C. § 801(a)(1)(A).

<sup>31</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 29 FCC Rcd 7051, 7139-43, paras. 276-91 (2014) (*April 2014 Connect America Order and FNPRM*).

<sup>32</sup> *See id.* at 7216-44, Appendix D.

<sup>33</sup> *Rate-of-Return Reform Order*, 31 FCC at 3094-3117, paras. 17-79.

<sup>34</sup> *See id.* at 3286-3314, Appendix D.

<sup>35</sup> 47 C.F.R. §§ 1.1200 *et seq.*

copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

#### **E. Comment Filing Procedures**

24. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

**People with Disabilities:** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).



**VI. ORDERING CLAUSES**

25. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 5, 10, 201-206, 214, 218-220, and 254 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 155, 160, 201-206, 214, 218-220, 254, and 1302, that this Report and Order IS ADOPTED, effective immediately upon release.

26. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 5, 10, 201-206, 214, 218-220, and 254 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 155, 160, 201-206, 214, 218-220, 254, and 1302, and sections 1.1, 1.3, 1.421, 1.427, and 1.429 of the Commission's rules, 47 CFR §§ 1.1, 1.3, 1.421, 1.427, and 1.429, that this Further Notice of Proposed Rulemaking IS ADOPTED, effective thirty (30) days after publication of the text or summary thereof in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**STATEMENT OF COMMISSIONER MICHAEL O'RIELLY**

Re: *Connect America Fund, WC Docket No. 10-90*

When the Commission adopted the *Rate-of-Return Reform Order* earlier this year, nobody could predict how many carriers would choose the voluntary path to model-based support. The Commission recognized the benefits of providing a defined amount of funding coupled with concrete deployment obligations and accountability requirements. Despite the additional certainty that the model option could offer, however, many carriers were reluctant to move away from the more familiar legacy structure, which also was reformed to target broadband deployment in unserved areas. In my meetings around the country with small carriers, I heard opt-in estimates ranging from a handful to several dozen providers.

When so many providers ultimately opted in, that created new challenges, as the Commission needed to decide how to handle oversubscription. But companies and their associations impressed upon the Commission the importance of implementing the model option in a timely manner. Fortunately, given the ideas put forward by commenters, the hard work and creative thinking of Commission staff, and the willingness of my colleagues to find consensus, we were able to come to a reasonable resolution.

The Commission allocates the available budget, including the additional \$50 million per year that was previously contemplated, in a way that takes into account deployment levels, while trying to maximize the number of carriers that can continue down the model path they had previously elected. We also seek comment on whether to provide further funding, which may be warranted to extend broadband to additional unserved consumers.

At the same time, I remain cognizant of the issues that have been raised in the record to ensure that the legacy option remains a viable path for carriers and their consumers. Indeed, as we continue to consider how to efficiently and effectively promote broadband deployment in this country, we need to make policy decisions in a holistic manner. We should carefully allocate any available funding in a way that maximizes coverage to unserved consumers regardless of the particular program or path.